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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,255	07/11/2001	Carl-Eric Kaiser	CM2388	9451

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EXAMINER
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MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/903,255

Applicant(s)

KAISER, CARL-ERIC

Examiner

Leigh McKane

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 051605.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 13, 14, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek (U.S. Patent No. 2,738,225) in view of Lee et al (U.S. Patent No. 5,008,115).

Meek teaches a method of deodorizing using an air-treatment material diffuser device 10 for containing a plurality of particles containing a volatile material (col.2, lines 6-8). The container may be fabricated of rigid materials (col.2, lines 40-43). Meek does not specifically teach using the device to deodorize or fragrance an environment which is sometimes wet and sometimes dry. Moreover, as Meek fails to teach any particular volatile material, Meek does not disclose that the particles contain perfume ingredients having a boiling point of greater than about 250 °C and a ClogP of greater than 3.

With respect to the environment of use, Meek discloses that the device is used for “the counteraction of odors” (col.1, line 21). As it is well-established in the art that bathrooms are sources of odor, it would have been obvious to one of ordinary skill in the art to employ the apparatus of Meek for the “counteraction of odors” within a bathroom environment, which is “sometimes wet and sometimes dry.”

Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7).

Art Unit: 1744

The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9. Perfumes exhibited by Lee et al include cinnamaldehyde (col.4, line 30). Cinnamaldehyde, also known as amyl cinnamic aldehyde, has a boiling point of 285 °C and a ClogP of 4.324, as disclosed in Applicant's specification, page 6. It would have been obvious to use the polymeric particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee et al teaches that the polymeric particles provide a more controlled release of active ingredient. Furthermore, it would have been obvious to the skilled artisan to choose an appropriate fragrance, as is common in the art. In making the combination of Meek with Lee et al, the perfumed particles would all be those containing cinnamaldehyde and thus, less than about 30% would have a boiling point of less than about 250 °C or a ClogP of less than about 3.

With respect to the amount of treatment material to be included within the apparatus of Meek, it is deemed obvious to optimize the amount based upon the desired effect of the device and based upon the particular treatment material used.

3. Claims 2-7, 9, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meek (U.S. Patent No. 2,738,225) in view of Kurz (DE 19532169) and Lee et al (U.S. Patent No. 5,008,115).

Meek teaches a method of deodorizing using an air-treatment material diffuser device 10 for containing a plurality of particles containing a volatile material (col.2, lines 6-8). The container may be fabricated of rigid materials (col.2, lines 40-43) and is openable and closeable. Although not specifically stated by Meek, it is obvious and necessary that the holes 15 must be smaller than the particles, otherwise the particles would fall out, thereby destroying the purpose of the device. Meek does not disclose using the device to deodorize or fragrance an environment

Art Unit: 1744

which is sometimes wet and sometimes dry. Moreover, as Meek fails to teach any particular volatile material, Meek does not disclose that the particles contain perfume ingredients having a boiling point of greater than about 250 °C and a ClogP of greater than 3.

Kurz discloses use of a perfume dispenser within a sauna, wherein the dispenser includes a source of perfume 23 and a label 27 with writing thereon.

It would have been obvious to one of ordinary skill in the art to use the dispenser of Meek within a sauna environment, as Kurz discloses that bathroom environments are sources of odors.

The limitations within the phrase “usage instructions to place said device inside an environment” (claims 2 and 3) are not given any patentable weight because the claim language refers to the pictures or markings on a material and these features are not held to be patentable (see M.P.E.P. 706.03(a)). Therefore, the claims have been interpreted to include any writing. As the label of Kurz includes writing thereon, it meets the claim limitations.

As to including writing and/or a label on the device of Meek, it is known in the art to place labels indicating the name of the product, ingredients, price, etc. on consumer products and would have been obvious in Meek.

Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7). The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9. Perfumes exhibited by Lee et al include cinnamaldehyde (col.4, line 30). Cinnamaldehyde, also known as amyl cinnamic aldehyde, has a boiling point of 285 °C and a ClogP of 4.324, as disclosed in Applicant’s specification, page 6. It would have been obvious to use the polymeric particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee

Art Unit: 1744

et al teaches that the polymeric particles provide a more controlled release of active ingredient. Furthermore, it would have been obvious to the skilled artisan to choose an appropriate fragrance, as is common in the art. Moreover, in making the combination of Meek with Lee et al, the perfumed particles would all be those containing cinnamaldehyde and thus, less than about 30% would have a boiling point of less than about 250 °C or a ClogP of less than about 3.

With respect to the amount of treatment material to be included within the apparatus of Meek, it is deemed obvious to optimize the amount based upon the desired effect of the device and based upon the particular treatment material used.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek, Kurz, and Lee et al as applied to claim 3 above, and further in view of D'Agostino (U.S. Patent No. 2,794,676).

The holes in the container of Meek are all of substantially the same size. However, D'Agostino teaches a similar type of dispensing device wherein the device uses holes of different sizes (see Figure 3: 31,32; col.3, lines 40-57) to vary and control the diffusion of a scented gel. Given this teaching, it is deemed obvious to fabricate the device of Meek having holes of any varying sizes in order to optimize the characteristics of the device.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek, Kurz, and Lee et al as applied to claim 3 above, and further in view of Bernarducci et al (U.S. Patent No. 5,163,616).

The combination *supra* is silent with respect to using different perfumed particles. Bernarducci evidences that it was known in the art of air fresheners to include more than one fragrance within a single dispenser. See Abstract; col.1, lines 63-67. Bernarducci explains that

Art Unit: 1744

by dividing the dispenser into different chambers, the useful life of the device can be extended while multiple fragrances within a single dispenser can be obtained. As the inclusion of more than one type of fragrance and/or treatment medium is known in the art, it would have been obvious in the device of Meek.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek in view of Lee et al and D'Agostino.

Meek teaches an air-treatment material diffuser device **10** for containing a plurality of particles containing a volatile material (col.2, lines 6-8). While Meek does not specifically teach that the volatile material is a perfume, it is generally known in the art of air-treating that "volatile air-treatment materials" refer to deodorants, perfumes, insecticides, and medicaments, and the use of a perfume in the apparatus of Meek would have been obvious. Although not specifically stated by Meek, it is obvious and necessary that the holes **15** must be smaller than the particles, otherwise the particles would fall out, thereby destroying the purpose of the device. Meek fails to teach any particular volatile material, and thus does not disclose that the particles contain perfume ingredients having a boiling point of greater than about 250 °C and a ClogP of greater than 3.

Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7). The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9. Perfumes exhibited by Lee et al include cinnamaldehyde (col.4, line 30). Cinnamaldehyde, also known as amyl cinnamic aldehyde, has a boiling point of 285 °C and a ClogP of 4.324, as disclosed in Applicant's specification, page 6. It would have been obvious to use the polymeric

Art Unit: 1744

particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee et al teaches that the polymeric particles provide a more controlled release of active ingredient. Furthermore, it would have been obvious to the skilled artisan to choose an appropriate fragrance, as is common in the art. Moreover, in making the combination of Meek with Lee et al, the perfumed particles would all be those containing cinnamaldehyde and thus, less than about 30% would have a boiling point of less than about 250 °C or a ClogP of less than about 3.

The holes in the container of Meek are all of substantially the same size. However, D'Agostino teaches a similar type of dispensing device wherein the device uses holes of different sizes (see Figure 3: 31,32; col.3, lines 40-57) to vary and control the diffusion of a scented gel. Given this teaching, it is deemed obvious to fabricate the device of Meek having holes of any varying sizes in order to optimize the characteristics of the device.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meek in view of Lee et al and Bernarducci et al.

Meek teaches an air-treatment material diffuser device 10 for containing a plurality of particles containing a volatile material (col.2, lines 6-8). The container may be fabricated of rigid materials (col.2, lines 40-43). Meek fails to teach any particular volatile material, and therefore does not disclose that the particles contain perfume ingredients having a boiling point of greater than about 250 °C and a ClogP of greater than 3. Meek is further silent with respect to using particles comprising different perfumes within the device.

Lee et al discloses uniform, spherical, polymeric particles that contain a volatile active ingredient, such as perfume, fragrance, and essential oils (col.4, lines 16-25; See Example 7). The particles provide controlled release of volatile fragrances or perfumes. See col.2, lines 7-9.



Art Unit: 1744

Perfumes exhibited by Lee et al include cinnamaldehyde (col.4, line 30). Cinnamaldehyde, also known as amyl cinnamic aldehyde, has a boiling point of 285 °C and a ClogP of 4.324, as disclosed in Applicant's specification, page 6. It would have been obvious to use the polymeric particles of Lee et al in place of the granular pumice or other absorbent material of Meek, as Lee et al teaches that the polymeric particles provide a more controlled release of active ingredient. Furthermore, it would have been obvious to the skilled artisan to choose an appropriate fragrance, as is common in the art. In making the combination of Meek with Lee et al, the perfumed particles would all be those containing cinnamaldehyde and thus, less than about 30% would have a boiling point of less than about 250 °C or a ClogP of less than about 3.

Bernarducci evidences that it was known in the art of air fresheners to include more than one fragrance within a single dispenser. See Abstract; col.1, lines 63-67. Bernarducci explains that by dividing the dispenser into different chambers, the useful life of the device can be extended while multiple fragrances within a single dispenser can be obtained. As the inclusion of more than one type of fragrance and/or treatment medium is known in the art, it would have been obvious in the device of Meek.

### ***Response to Arguments***

8. Applicant's arguments filed 28 April 2005 have been fully considered but they are not persuasive.
9. Applicant argues on page 5 of the Response that Meek teaches "an essentially cylindrical body of air treating gel." However, this is merely one embodiment of Meek. Meek also teaches using "volatilizable components...absorbed on a porous solid carrier such as pumis or the like"

Art Unit: 1744

(col.1, lines 25-28) and “other solid or solidified material carrying volatilizable components” (col.4, lines 20-21). As set forth in the previous and instant office actions, one of ordinary skill of the art would have found it obvious to fabricate the dispenser of Meek so that the apertures 11,15 would have been smaller than the size of the carrier. One would not have been motivated to defy logic by providing apertures larger than the size of the carrier. This would destroy the invention.


### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (5:30 am-3:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**

elm  
10 July 2005